UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

APR 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,475,428   :   DECISION ON REQUEST
Smith, et al.   :   FOR
Issue Date: January 6, 2009   :   RECONSIDERATION OF
Application No. 10/600,738   :   PATENT TERM ADJUSTMENT
Filed: June 20, 2003   :   and
Atty Docket No.BSIL-0116US   :   NOTICE OF INTENT TO ISSUE
                                       :   CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 4, 2009, which
is being treated as a petition under 37 CFR 1.705(d) requesting
that the patent term adjustment indicated on the above-
identified patent be corrected to indicate that the term of the
above-identified patent is extended or adjusted by one thousand,
one hundred and forty (1,140) days.

The petition to correct the patent term adjustment indicated on
the above-identified patent to indicate that the term of the
above-identified patent is extended or adjusted **by one thousand
seventy-seven (1,077) days is GRANTED to the extent indicated
herein.**

As the period from the filing date of the request for continued
examination (RCE) to the issue date of the patent is not
included in the "B" delay period, the over three year period
begins on June 21, 2006, and ends on August 11, 2008, the day
before the RCE was filed, and is 783 (not 784) days. See 35
U.S.C. 154(b)(1)(B)(i).

It is noted that patentees failed to account for the filing of
the notice of appeal on January 29, 2008. The Office reminds
patentees that the period consumed by appellate review, whether

successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 195 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, January 29, 2008, and ending on the day before the Request for Continued Examination was filed, August 11, 2008. Thus, the B delay is 588 days (783 - 195). Accordingly, the patent term adjustment is 1,077 days (677 days of A delay + 588 days of B delay - 0 days of overlap[1] - 188 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand seventy-seven (1,077) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

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[1] The relevant period of "B" delay for determining periods of overlap began January 1, 2007, and ended August 11, 2008. The period of" "A" delay began December 27, 2004, and ended November 3, 2006. Accordingly, there are no overlapping periods of delay between "A" delay and "B" delay.

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT   : 7,475,428 B2

DATED   : Jan. 6, 2009

INVENTOR(S) : Smith et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

 [*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (596) days

Delete the phrase "by 596 days" and insert – by 1,077 days--